

REAL ESTATE REGULATORY AUTHORITY, BIHAR

Telephone Bhavan, Patel Nagar, Patna-800023.

Before the Bench of Mrs. Nupur Banerjee, Member

Complaint Case Nos. CC/738/2019

Saurav Kumar.....Complainant

Vs

M/s Bhawani Developers.....Respondent

Project: G5 Multistoried Building Complex

For Complainant: Mr. Mahesh Prasad, Advocate

For Respondent: Mr. Punit Kumar, Advocate

30/06/2022

ORDER

The present complainant had been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 by the complainant Saurav Kumar seeking following relief as below:-

- I. To direct the respondent to handover the peaceful possession of the land;
- II. To pay Rs. 20,00,000/- for loss incurred;
- III. To award a compensation of Rs. 10,00,000/- towards delaying the project, mental harassment.

The matter was last heard on 23-05-2022 and after hearing on length both the parties, the order was kept reserved.

The complainant in his complaint petitions dated 03-12-2019 has stated the complainant's father and the Developer have entered into a Development Agreement dated 20.05.2016, whereby, the exclusive right and license to develop the said property for the construction of the multistoried building complex was handed over to the respondent. He further submitted that according to the Clause 16 of the Development Agreement, the Respondent had agreed to handover the possession of the land owner's fully constructed with all the amenities within 36 months, with further grace period of 6 months in case of any accident or miss-happening which are beyond control. It has been further submitted that the father of the complainant died in the year 2016 and thereafter, the complainant being the only son was to take care of the aforementioned Development Property. He further submitted that the respondent agreed to get the construction of the building approved by the competent authority to avoid entering into any dispute in future. He further submitted that the respondent in breach of the Development Agreement has completely failed to get the said project completed in the agreed time frame, neither did he get the approval of RERA for the

construction of the building. He also submitted that the respondent has not registered the project with Authority. It has also been submitted that the respondent till date has not issued any notice to the complainant in regard to any reasons for delay of the construction neither respondent has given reply to verbal requests made by the complainant regarding the same. He further submitted that the limitation period i.e. 36 months and further grace period of 6 months for construction of aforesaid G5 multistoried building has already been passed but respondent herein is neither developed the property as per the agreement, nor returning the peaceful possession of Complainant's land. Hence, this complainant.

On 04-02-2021, complainant has filed rejoinder denying the contents of respondent stated therein reply filed and prayed to direct the respondent to hand over the entire land back to the complainant.

On 05-04-2021, a detailed written Arguments filed by the complainant stating that respondent has violated the terms and conditions of development agreement and reiterated his prayer to direct the respondent to hand over the entire land back to the complainant.

Accordingly, a notice dated 20-10-2020 was sent to the respondent company under Section 31 of the RERA Act

and Rule 36 of the RERA Rules 2017 to appear and file their reply.

The respondent company has filed its reply on 07-02-2020 stating therein that the complainant is not maintainable. It has been further submitted that complainant's wife namely Priyanaka Kumari has filed testamentary case before the Patna High Court for the grant of probate regarding a will dated 23-07-2012 executed by complainant's father (Deceased) regarding several land including this plot in question. It has also been submitted that while referring to para-x of the development agreement that if G-5 building will not be permitted by the Municipal Corporation, Begusarai then, in that moment, the land owner and the developer agreed mutually that the same will be adjusted with their consent. It has been further submitted that on 12-04-2018, the Municipal Corporation, Begusarai gave sanction for G-3 construction for residential purpose only. It has been further submitted that since the map was approved for residential purpose only, hence, the Act is not applicable and moreover, as complainant has not allowed for construction over land, respondent has filed title suit before the civil court upon which paper publication has been done due to non appearance of complainant therein the case.

On 02-02-2021, respondent has filed supplementary reply stating therein that the respondent has muted the land and constructing it as per the approved sanctioned plan.

On 30-03-2021, respondent has filed another supplementary reply stating therein that second agreement dated 20-05-2016 was signed between the parties where it was agreed that in case the terms and conditions mentioned in para-x of the main development agreement is not fulfilled, in that case, the ground land would be divided in 45:55 ratio and the respondent would get his 45% share from east and he would construct his residential building in his 45% share from east.

During the last hearing on 23-05-2022, where complainant was absent. Learned counsel for the respondent present has submitted that the project is unregistered. He has already filed reply. His submission was that the project is for residential purpose. According to the agreement, the land was divided into two parts. In the first part they will start making residence for living therein for own purpose. In the year 2016 agreement was executed. They made construction up to first floor. The main executor died and the complainant is his son, who is the land owner. They filed a suit for specific

performance in the Civil Court. Notice was issued but the complainant denies the notice. Now the case is posted for judgment. In that case, he has appeared for revocation of the agreement. He has conscious knowledge of the proceeding. He has filed a probate case in Patna High Court in 2018. He further submitted that the respondent appeared in both the cases. Now, he has filed the case that the project is unregistered. Referring to paragraph 11 he submits that the complainant has made forgery by deleting two witnesses of the agreement.

After the perusal of case records and considering the submissions of both the parties, the Bench observes that map sanctioned as brought on record is for residential purpose but as respondent submitted that since only G3 has been approved for construction by the Municipal Corporation, Begusari which will be constructed for own residential purpose, hence, in such circumstances the Bench finds no merit in entering upon the issue brought by the complainant as the issue does not fall under the ambit of the Act to entertain. The Bench also observes that the prayer raised by the complainant regarding directing the respondent to hand over the entire land back to the complainant pertains to dispute of civil nature for which complainant can approach competent civil court.

So far the issue of compensation and loss incurred is concerned, the complainant is at liberty to press the same before the appropriate forum.

With these observations, the matter is disposed of.

Sd/-

Nupur Banerjee
Member